

SENATE BILL 17

Unofficial Copy
J3

2003 Regular Session
3lr0547

By: **Senator Della**

Introduced and read first time: January 13, 2003

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Health Care Foundation - Repeal**

3 FOR the purpose of terminating the Maryland Health Care Foundation; altering
4 certain provisions of law relating to the Maryland Health Care Trust; altering
5 the trustees of the Maryland Health Care Trust and providing for the State
6 Treasurer to be the trustee of the Trust; requiring the Maryland Medbank
7 Program to be administered by the Department of Health and Mental Hygiene;
8 requiring the Department to contract with certain entities to operate the
9 Program; requiring the Department to ensure that the Program is available to
10 residents in certain geographic regions of the State; requiring the Department to
11 use certain regional offices; requiring the Department to require certain
12 financial reports from entities that operate the Program; requiring the
13 Department to release funds to certain entities; requiring the Department to
14 submit a certain report; extending a certain termination date for the Maryland
15 Medbank Program; and generally relating to the termination of the Maryland
16 Health Care Foundation.

17 BY repealing

18 Article - Health - General

19 Section 15-305; and 20-501 through 20-510, inclusive, and the subtitle

20 "Subtitle 5. Maryland Health Care Foundation"

21 Annotated Code of Maryland

22 (2000 Replacement Volume and 2002 Supplement)

23 BY repealing

24 Chapter 701 of the Acts of the General Assembly of 2001

25 Section 2

26 BY repealing and reenacting, with amendments,

27 Article - Health - General

28 Section 15-101 and 15-124.2

29 Annotated Code of Maryland

30 (2000 Replacement Volume and 2002 Supplement)

1 BY repealing and reenacting, with amendments,
2 Chapter 134 of the Acts of the General Assembly of 2001
3 Section 12

4 BY repealing and reenacting, with amendments,
5 Chapter 135 of the Acts of the General Assembly of 2001
6 Section 12

7 BY repealing and reenacting, with amendments,
8 Article - State Government
9 Section 6.5-301
10 Annotated Code of Maryland
11 (1999 Replacement Volume and 2002 Supplement)

12 BY adding to
13 Article - State Government
14 Section 6.5-401 to be under the new subtitle "Subtitle 4. Maryland Health Care
15 Trust"
16 Annotated Code of Maryland
17 (1999 Replacement Volume and 2002 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That Section(s) 15-305; and 20-501 through 20-510, inclusive, and the
20 subtitle "Subtitle 5. Maryland Health Care Foundation" of Article - Health - General
21 of the Annotated Code of Maryland be repealed.

22 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 2 of Chapter
23 701 of the Acts of the General Assembly of 2001 be repealed.

24 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
25 read as follows:

26 **Article - Health - General**

27 15-101.

28 (a) In this title the following words have the meanings indicated.

29 (a-1) "Dental managed care organization" means a pre-paid dental plan that
30 receives fees to manage dental services.

31 (a-2) "Dental services" means diagnostic, emergency, preventive, and
32 therapeutic services for oral diseases.

33 (b) "Enrollee" means a program recipient who is enrolled in a managed care
34 organization.

1 (b-1) "Expedited eligibility" means a streamlined eligibility process, conducted
2 by the local health departments, for medical assistance for children and pregnant
3 women under which an eligibility determination is made promptly, but not later than
4 10 working days after the date of application.

5 (c) "Facility" means a hospital or nursing facility including an intermediate
6 care facility, skilled nursing facility, comprehensive care facility, or extended care
7 facility.

8 (d) ["Foundation" means the Maryland Health Care Foundation established
9 under Title 20, Subtitle 5 of this article.

10 (e)] (1) "Historic provider" means a health care provider, as defined in §
11 19-132 of this article, or a residential service agency licensed under Title 19, Subtitle
12 4A of this article, that, on or before June 30, 1995, had a demonstrated history of
13 providing services to program recipients, as defined by the Department in
14 regulations.

15 (2) "Historic provider", to the extent the provider meets the
16 requirements in paragraph (1) of this subsection, shall include:

17 (i) A federal or State qualified community health center;

18 (ii) A provider with a program for the training of health care
19 professionals, including an academic medical center;

20 (iii) A hospital outpatient program, physician, or advanced practice
21 nurse that is a Maryland Access to Care (MAC) provider;

22 (iv) A local health department;

23 (v) A hospice, as defined in Title 19, Subtitle 9 of this article;

24 (vi) A pharmacy; and

25 (vii) Any other historic provider designated in accordance with
26 regulations adopted by the Department.

27 [(f)] (E) "Managed care organization" means:

28 (1) A certified health maintenance organization that is authorized to
29 receive medical assistance prepaid capitation payments; or

30 (2) A corporation that:

31 (i) Is a managed care system that is authorized to receive medical
32 assistance prepaid capitation payments;

33 (ii) Enrolls only program recipients or individuals or families
34 served under the Maryland Children's Health Program; and

1 (iii) Is subject to the requirements of § 15-102.4 of this title.

2 [(g)] (F) "Ombudsman program" means a program that assists enrollees in
3 resolving disputes with managed care organizations in a timely manner and that is
4 responsible, at a minimum, for the following functions:

5 (1) Investigating disputes between enrollees and managed care
6 organizations referred by the enrollee hotline;

7 (2) Reporting to the Department:

8 (i) The resolution of all disputes;

9 (ii) A managed care organization's failure to meet the Department's
10 requirements; and

11 (iii) Any other information specified by the Department;

12 (3) Educating enrollees about:

13 (i) The services provided by the enrollee's managed care
14 organization; and

15 (ii) The enrollee's rights and responsibilities in receiving services
16 from the managed care organization; and

17 (4) Advocating on behalf of the enrollee before the managed care
18 organization, including assisting the enrollee in using the managed care
19 organization's grievance process.

20 [(h)] (G) "Primary mental health services" means the clinical evaluation and
21 assessment of services needed by an individual and the provision of services or
22 referral for additional services as deemed medically appropriate by a primary care
23 provider.

24 [(i)] (H) "Program" means the Maryland Medical Assistance Program.

25 [(j)] (I) "Program recipient" means an individual who receives benefits under
26 the Program.

27 [(k)] (J) "Specialty mental health services" means any mental health services
28 other than primary mental health services.

29

Chapter 134 of the Acts of 2001

30 SECTION 12. AND BE IT FURTHER ENACTED, That Sections 3 and 4 of
31 this Act shall take effect July 1, 2001. On the earlier of the end of June 30, 2003, or
32 the availability of comparable prescription drug benefits provided by Medicare under
33 Title XVIII of the Social Security Act, as amended, with no further action required by
34 the General Assembly, [Sections 3 and] SECTION 4 of this Act shall be abrogated and

1 of no further force and effect. If comparable prescription drug benefits are provided by
 2 Medicare under Title XVIII of the Social Security Act, the Secretary of Health and
 3 Mental Hygiene shall notify the Department of Legislative Services, 90 State Circle,
 4 Annapolis, Maryland 21401 not later than 90 days before prescription drug benefits
 5 are to be provided.

6

Chapter 135 of the Acts of 2001

7 SECTION 12. AND BE IT FURTHER ENACTED, That Sections 3 and 4 of
 8 this Act shall take effect July 1, 2001. On the earlier of the end of June 30, 2003, or
 9 the availability of comparable prescription drug benefits provided by Medicare under
 10 Title XVIII of the Social Security Act, as amended, with no further action required by
 11 the General Assembly, [Sections 3 and] SECTION 4 of this Act shall be abrogated and
 12 of no further force and effect. If comparable prescription drug benefits are provided by
 13 Medicare under Title XVIII of the Social Security Act, the Secretary of Health and
 14 Mental Hygiene shall notify the Department of Legislative Services, 90 State Circle,
 15 Annapolis, Maryland 21401 not later than 90 days before prescription drug benefits
 16 are to be provided.

17

Article - State Government

18 6.5-301.

19 (a) The appropriate regulating entity may not approve an acquisition unless it
 20 finds the acquisition is in the public interest.

21 (b) An acquisition is not in the public interest unless appropriate steps have
 22 been taken to:

23 (1) ensure that the value of public or charitable assets is safeguarded;

24 (2) ensure that:

25 (i) the fair value of the public or charitable assets of a nonprofit
 26 health service plan or a health maintenance organization will be distributed to the
 27 [Maryland Health Care Foundation that was established in § 20-502 of the Health -
 28 General Article] MARYLAND HEALTH CARE TRUST ESTABLISHED UNDER § 6.5-401 OF
 29 THIS ARTICLE; or

30 (ii) 1. 40% of the fair value of the public or charitable assets of a
 31 nonprofit hospital will be distributed to the [Maryland Health Care Foundation that
 32 was established in § 20-502 of the Health - General Article] MARYLAND HEALTH
 33 CARE TRUST ESTABLISHED UNDER § 6.5-401 OF THIS ARTICLE; and

34 2. 60% of the fair value of the public or charitable assets of a
 35 nonprofit hospital will be distributed to a public or nonprofit charitable entity or trust
 36 that is:

37 A. dedicated to serving the unmet health care needs of the
 38 affected community;

- 1 B. dedicated to promoting access to health care in the
2 affected community;
- 3 C. dedicated to improving the quality of health care in the
4 affected community; and
- 5 D. independent of the transferee;

6 (3) ensure that no part of the public or charitable assets of the
7 acquisition inure directly or indirectly to an officer, director, or trustee of a nonprofit
8 health entity; and

9 (4) ensure that no officer, director, or trustee of the nonprofit health
10 entity receives any immediate or future remuneration as the result of an acquisition
11 or proposed acquisition except in the form of compensation paid for continued
12 employment with the acquiring entity.

13 (c) The regulating entity may determine that a distribution of assets of a
14 nonprofit health entity is not required under this section if the transaction is:

- 15 (1) determined not to be an acquisition;
- 16 (2) in the ordinary course of business; and
- 17 (3) for fair value.

18 (d) In determining fair value, the appropriate regulating entity may consider
19 all relevant factors, including, as determined by the regulating entity:

- 20 (1) the value of the nonprofit health entity or an affiliate or the assets of
21 such an entity that is determined as if the entity had voting stock outstanding and
22 100% of its stock was freely transferable and available for purchase without
23 restriction;
- 24 (2) the value as a going concern;
- 25 (3) the market value;
- 26 (4) the investment or earnings value;
- 27 (5) the net asset value; and
- 28 (6) a control premium, if any.

29 (e) In determining whether an acquisition is in the public interest, the
30 appropriate regulating entity shall consider:

- 31 (1) whether the transferor exercised due diligence in deciding to engage
32 in an acquisition, selecting the transferee, and negotiating the terms and conditions
33 of the acquisition;

1 (2) the procedures the transferor used in making the decision, including
2 whether appropriate expert assistance was used;

3 (3) whether any conflicts of interest were disclosed, including conflicts of
4 interest of board members, executives, and experts retained by the transferor,
5 transferee, or any other parties to the acquisition;

6 (4) whether the transferor will receive fair value for its public or
7 charitable assets;

8 (5) whether public or charitable assets are placed at unreasonable risk if
9 the acquisition is financed in part by the transferor;

10 (6) whether the acquisition has the likelihood of creating a significant
11 adverse effect on the availability or accessibility of health care services in the affected
12 community;

13 (7) whether the acquisition includes sufficient safeguards to ensure that
14 the affected community will have continued access to affordable health care; and

15 (8) whether any management contract under the acquisition is for fair
16 value.

17 (f) The public or charitable assets distributed to a public or nonprofit
18 charitable entity or trust in accordance with subsection (b)(2) of this section shall be
19 in the form of cash.

20 (g) The appropriate regulating entity shall determine whether a payment by a
21 nonprofit health entity, required under an agreement or contract for the acquisition of
22 a nonprofit health entity if the agreement or contract is broken by the nonprofit
23 health entity, is in the public interest.

24 SUBTITLE 4. MARYLAND HEALTH CARE TRUST.

25 6.5-401.

26 (A) (1) THERE IS A MARYLAND HEALTH CARE TRUST.

27 (2) THE TRUST IS A BODY CORPORATE, SUBJECT TO MODIFICATION OR
28 TERMINATION BY THE GENERAL ASSEMBLY.

29 (3) THE PURPOSE OF THE TRUST IS TO:

30 (I) BE OF GENERAL BENEFIT TO THE RESIDENTS OF THE STATE;

31 (II) BE CHARITABLE IN NATURE; AND

32 (III) ACCEPT AND RETAIN MONEYS FOR FUTURE EXPENDITURES TO
33 BE USED TO IMPLEMENT ACTS OF THE GENERAL ASSEMBLY, OTHER THAN THE STATE
34 BUDGET BILL, THAT:

1 (2) "Foundation" means the Maryland Health Care Foundation
2 established under § 20-502 of this article.

3 (3)] SECTION, "Program" means the Maryland Medbank Program
4 established under this section.

5 (b) There is a Maryland Medbank Program.

6 (c) The purpose of the Program is to improve the health status of individuals
7 throughout the State who lack prescription drug coverage by providing access to
8 medically necessary prescription drugs through patient assistance programs
9 sponsored by pharmaceutical drug manufacturers.

10 (d) (1) Subject to paragraph (2) of this subsection, the Program shall be
11 administered by the [Foundation] DEPARTMENT.

12 (2) The [Foundation] DEPARTMENT shall contract with one or more
13 government or nonprofit entities to operate the Program.

14 (e) (1) The administration and operation of the Program shall be funded
15 through a grant provided by the Department.

16 (2) Program funds may be used in part to purchase interim supplies of
17 prescription drugs for enrollees who have applied to participate in a manufacturer's
18 patient assistance program but have not yet received the approved prescription drug.

19 (f) (1) The [Foundation] DEPARTMENT shall ensure that the Program is
20 available to residents in each of the following geographic regions of the State:

21 (i) Western Maryland;

22 (ii) The Eastern Shore;

23 (iii) The Baltimore metropolitan area;

24 (iv) The Maryland counties in the Washington, D.C. metropolitan
25 area; and

26 (v) Southern Maryland, including Anne Arundel County.

27 (2) The [Foundation] DEPARTMENT shall use Medbank of Maryland,
28 Inc. and the Western Maryland Prescription Program as the regional offices for the
29 Baltimore metropolitan area and Western Maryland, respectively.

30 (g) Eligibility for the Program shall be limited only by the criteria established
31 by pharmaceutical manufacturers for their patient assistance programs.

32 (h) (1) The [Foundation] DEPARTMENT shall require detailed financial
33 reports at least quarterly from the entities that operate the Program.

1 (2) The [Foundation] DEPARTMENT shall release funds to the entities
2 that operate the Program as needed and justified by the quarterly reports filed in
3 accordance with paragraph (1) of this subsection.

4 (i) On or before December 1, 2001, and annually thereafter, the [Foundation]
5 DEPARTMENT shall report to the Governor and, in accordance with § 2-1246 of the
6 State Government Article, to the General Assembly, on the status of the Maryland
7 Medbank Program established under this section, including:

8 (1) The number and demographic characteristics of the State residents
9 served by the Program;

10 (2) The types and retail value of prescription drugs accessed through the
11 Program;

12 (3) The nature and extent of outreach performed to inform State
13 residents of the assistance available through the Program; and

14 (4) The total volume and retail value of each brand name drug, by
15 manufacturer, accessed through the Program.

16 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take
17 effect June 1, 2003. On the earlier of the end of June 30, 2006, or the availability of
18 comparable prescription drug benefits provided by Medicare under Title XVIII of the
19 Social Security Act, as amended, with no further action required by the General
20 Assembly, Section 4 of this Act shall be abrogated and of no further force and effect. If
21 comparable prescription drug benefits are provided by Medicare under Title XVIII of
22 the Social Security Act, the Secretary of Health and Mental Hygiene shall notify the
23 Department of Legislative Services, 90 State Circle, Annapolis, Maryland 21401 not
24 later than 90 days before prescription drug benefits are to be provided.